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DARBY & DARBY

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NEW YORK, NY 10022

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4-2-04

Attorney JL

OFFICE OF PETITIONS

In re Application of  
Fischer et al.

Application No. 08/392,127

Filed: February 22, 1995

Attorney Docket No. 2338/0A887

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed July 29, 2003, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

This application became abandoned for failure to timely reply to the non-final Office action mailed November 12, 1996. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, this application became abandoned on February 13, 1997. A Notice of Abandonment was mailed May 27, 1997.

A grantable petition under 37 CFR 1.137(b) must be accompanied by:

- (1) the required reply,
- (2) the petition fee,
- (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, and
- (4) a terminal disclaimer and fee if the application was filed on or before June 8, 1995 or if the application is a design application.

The instant petition does not satisfy requirements (3) and (4) above. Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information. See MPEP 711.03(c)(III)(C) and (D).

The delay in filing the instant petition raises a question as to whether the entire delay in filing a petition under 37 CFR 1.137(b) was unintentional. Petitioner should provide a full explanation for the delay from the date of abandonment until the date the instant petition was filed. Petitioner should provide evidence to establish the entire delay was unintentional within the meaning of 35 U.S.C. § 41(a)(7) and 37 CFR 1.137(b).  
DRK:KGJ:ew

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See In re Application of G, 11 USPQ2d 1378, 1380 (Comm'r Pats. 1989).

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Since the application was filed prior to June 8, 1995, petitioner is also required to submit a terminal disclaimer and the proper fee.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

By facsimile: (703) 308-6916  
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By hand: Office of Petitions  
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Telephone inquiries should be directed to Paralegal Liana Chase at (703) 306-0482.

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